

3. Plaintiff's Original Petition alleges causes of action against Arch for breach of contract, violations of the Texas Insurance Code and Deceptive Trade Practices Act, and breach of the duty of good faith and fair dealing.

II. ARCH'S NOTICE OF REMOVAL IS TIMELY

4. Arch was served with the Original Petition and citation May 21, 2019 by delivery through CT Corporation System. The citation is attached as **Exhibit B** to this Notice of Removal. Accordingly, Arch files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

III. VENUE IS PROPER

5. Venue is proper in the United States District Court for the Western District of Texas, Midland-Odessa Division, under 28 U.S.C. §§ 124(d)(7) and 1441(a) because this district and division embrace the place where the removed action has been pending.

IV. BASIS FOR REMOVAL JURISDICTION

6. Removal of this action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court and the federal courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332. Specifically, removal is proper because there is now, and was at the time this action was filed, complete diversity of citizenship between Plaintiff and Arch, and the amount in controversy exceeds \$75,000 excluding interest and costs.

7. In Plaintiff's Original Petition, Plaintiff states that it is a limited liability company organized and operating under the laws of the State of Texas. The citizenship of a limited liability company is determined by the citizenship of its members.¹ Skinny Kid Production, LLC's only

¹ *Carden v. Arkoma Associates*, 494 U.S. 185, 195–96, 110 S. Ct. 1015, 1021 (1990).

reported member/manager is Justin Kirkham, an individual domiciled in the State of Texas. Plaintiff is thus a citizen of Texas for diversity jurisdiction purposes.

8. Arch was at the time this lawsuit was filed, and at the date of this Notice remains, a foreign corporation organized under the laws of Missouri, with its principal place of business in New Jersey. Thus, Arch is a citizen of Missouri and New Jersey for diversity jurisdiction purposes.

9. Accordingly, there is now, and was at the time this action was filed, complete diversity of citizenship between Plaintiff and Defendant.

V. AMOUNT IN CONTROVERSY

10. If it is facially apparent that Plaintiff's claims exceed the jurisdictional amount, Arch's burden is satisfied.²

11. When removal is premised upon diversity jurisdiction and the parties dispute whether the amount in controversy exceeds \$75,000, courts must determine the amount in controversy in light of "the claims in the state court petition as they existed at the time of removal."³

12. Plaintiff's Original Petition states that it seeks damages over \$250,000 but not more than \$1,000,000.⁴

13. Thus, Plaintiff's claims exceed the jurisdictional minimum of \$75,000.00. Because there is complete diversity among the parties and the amount in controversy requirement is satisfied, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a). Removal is therefore proper.

² *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1999).

³ *Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002).

⁴ See **Exhibit A** at 2.

VI. CONCLUSION

14. For the reasons mentioned above, because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00, removal of this action is proper under 28 U.S.C. § 1332(a).

15. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be promptly filed with the clerk of the 70th Judicial District Court, Ector County, Texas.

16. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice will be given to all adverse parties promptly after the filing of this Notice.

17. All pleadings, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a).

WHEREFORE, Defendant ARCH requests that this action be removed from the 70th Judicial District Court in Ector County, Texas, to the United States District Court for the Western District of Texas, Midland-Odessa Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

ZELLE LLP

By: /s/ Brett A. Wallingford

Brett A. Wallingford

State Bar No. 000797618

bwallingford@zelle.com

Michael P. O'Brien

State Bar No. 24103418

mobrien@zelle.com

901 Main Street, Suite 4000

Dallas, TX 75202

Telephone: 214-742-3000

Facsimile: 214-760-8994

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Notice of Removal has been served this 7th day of June 2019, by electronic filing as follows:

Shaun W. Hodge

State Bar No. 24052995

THE HODGE LAW FIRM, PLLC

Old Galveston Square Building

2211 Strand, Suite 302

Galveston, Texas 77550

Telephone: 409-762-5000

Facsimile: 409-763-2300

Attorney for Plaintiff

/s/ Brett A. Wallingford

Brett A. Wallingford